

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
The Redefinition of the Rural Service	)	CC Docket No. 96-45
Areas of Two Rural Telephone Companies	)	
in the State of Colorado	)	

**Comments of TCA**

**I. Introduction**

TCA, Inc. - Telcom Consulting Associates ("TCA") hereby submits these comments in response to the Public Notice as captioned above. On two separate occasions, the Colorado Public Utilities Commission ("Colorado Commission") has requested the FCC to redefine the service territory of a rural telephone company in Colorado. The Colorado Commission has granted eligible telecommunications carrier ("ETC") status to N. E. Colorado Cellular, Inc. ("NECC") and Western Wireless Holding Company, Inc. ("Western Wireless") and claims that redefinition is necessary to enable the two wireless carriers to access federal support mechanisms.

The first request, to redefine the service territory of CenturyTel of Eagle, Inc. ("CenturyTel"), was filed on August 26, 2002. The Wireline Competition Bureau ("Bureau") failed to initiate a proceeding within 90 days of the release of the Public Notice and the proposed redefinition was allowed to go into effect on November 26, 2002. The Bureau did initiate a proceeding on the Colorado Commission's second request, to redefine the service territory of Delta County Tele-Comm, Inc. ("Delta County"). The FCC has now established a consolidated proceeding to address the issues that have heretofore arisen. Specifically, the FCC seeks comment on 1) the CenturyTel Application for Review; (2) the Colorado Commission Petition to redefine the service territory of Delta County and (3) the CenturyTel *ex parte* request that the full Commission suspend the decision of the Bureau to let the redefinition of CenturyTel's rural service territory take effect.

TCA is a management consulting firm providing financial, regulatory, management and marketing services for over fifty small, rural local exchange carriers (“LECs”) throughout the United States. TCA’s clients derive a significant portion of their revenues from universal service support mechanisms and therefore will be directly impacted by the FCC’s actions in this proceeding. These comments address the concerns of TCA’s clients.

## **II. The Purpose of Universal Service Support Mechanisms is to Preserve and Advance Universal Service – Not to Promote Uneconomic “Competition”**

For over seventy years, universal service – affordable access for all Americans to a ubiquitous, high-quality network - has served as the cornerstone of national and state telecommunications policy. Rural LECs have been the primary promoters of universal service as they have constructed facilities in some of this country’s most remote and difficult areas to serve. This would not have been possible without access to federal and state support mechanisms, which have enabled rural LECs to recover the cost of these facilities, while charging customers affordable rates. Today, universal service as a national policy is at a crossroads, as the continued viability of these very support mechanisms is being jeopardized. Ironically, this occurs in spite of the codification of universal service principles in the Telecommunications Act of 1996 (“1996 Act”) and a generally favorable reform of universal service for rural LECs in 2001.<sup>1</sup> This new threat to universal service is the misuse of scarce universal service funds by the Bureau and various state commissions in an effort to incent “competition” in some of the most sparsely populated and high cost areas of the country. Many state commissions (in conjunction with the Bureau) are providing wireless providers unfettered access to the universal service fund without “burdening” them with even the slightest obligation of actually providing true universal service.

Under the 1996 Act, competitors were permitted access to universal service support mechanisms, but only after meeting the following requirements: 1) be a common carrier, 2) offer the services supported by universal service support mechanisms under Section 254(c), 3) offer

---

<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG)*

these services throughout the service area for which the designation is received and 4) advertise the availability of such services and the associated charges. In areas served by rural LECs, Congress imposed an additional requirement - "Upon request and consistent with the public interest, convenience, and necessity, the State Commission *may* in the case of an area served by a rural telephone company, designate more than one common carrier as an eligible telecommunications carrier... Before designating an additional ETC for an area served by a rural company, *the State commission shall find that the designation is in the public interest.*"<sup>2</sup> Congress correctly recognized the potential dangers in designating a second ETC in higher cost, lower density areas, served by rural providers.

Shortly thereafter, wireless providers began pursuing access to universal service support mechanisms by promising to offer a fixed wireless service designed to utilize its existing cellular network which would compete with wireline LEC providers.<sup>3</sup> Instead of thoughtful consideration of the public interest requirement, including an analysis of the costs and benefits, as mandated by Congress, the Colorado Commission (like many others) accepted the vague assertions of the wireless providers that "competition is always in the public interest" and granted ETC status. Amazingly, in reaching the conclusion that the granting ETC status to Western Wireless was in the public interest, the Colorado Commission ignored the testimony of its own staff that the very existence of some rural LECs could be jeopardized by this action.<sup>4</sup> In other words, Congressional intent – that access to support mechanisms in areas served by rural LECs was intended to be limited – was largely ignored by the Colorado Commission.

As more wireless providers attain ETC status, competing for customers with rural LECs clearly takes a back seat to securing support for its existing cellular customer base. Wireless providers contend that limiting federal support to its initial competitive offering, the fixed wireless product, is outside the realm of the jurisdiction of the state commission. This proceeding, in combination with the concurrent RCC proceeding,<sup>5</sup> raises three important issues which further diverge from the clear intent of Congress: 1) Redefinition of service territories

---

*Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, FCC 01-157, released May 23, 2001 ("Rural Task Force Order")

<sup>2</sup> 47 U.S.C. §214(e)(2)

<sup>3</sup> Both NECC and Western Wireless sought ETC status by offering such services. Western Wireless referred to its offering as "Basic Universal Service."

<sup>4</sup> Docket No. 00K-255T, page 15 of the direct testimony of Staff Witness Mitchell.

<sup>5</sup> See *Pleading Cycle Established for Comments Regarding Applications for Review of Orders Designating Eligible Telecommunications Carriers in the State of Alabama*, DA 03-45, CC Docket 96-45, rel. January 10, 2003.

before the designation of a competitive ETC; 2) Redefinition of service areas below the wire center level; and 3) Noncompliance with the stated policy of the FCC and the Federal-State Joint Board on Universal Service ("Joint Board") to limit redefinition of service areas to non-contiguous portions of a rural LEC's study area.

Aided by the FCC's skewed interpretation of competitive neutrality, which enables wireless carriers to receive support based on the rural LEC's cost of providing service across its entire service area, wireless ETCs have successfully embarked on an unprecedented grab for federal and state support. Federal support received by wireless ETCs has ballooned from \$500,000 in 1999 to a projection of more than \$100 million in 2003.<sup>6</sup> However, this massive increase is only the beginning. OPASTCO has estimated that if all wireless providers nationwide were granted ETC status (a likely scenario considering the competitive nature of the wireless market) the annual funding requirements of the federal high cost support mechanisms would increase by \$2 billion.<sup>7</sup> Such an increase would surely result in the collapse of federal universal service support mechanisms.

Federal universal service support mechanisms are beginning to show signs of strain of ever-spiraling growth, primarily attributable to the uncapped support available to competitive ETCs.<sup>8</sup> Federal funds are supported by an assessment (currently 7.3%) on end user interstate revenues. During 2002, the FCC determined an increase in the assessment rate would be required to 8.7% and 9.3%, for the third and fourth quarters, respectively. The FCC, recognizing that an assessment level of this magnitude would be objectionable to contributors, took unprecedented action and transferred monies from Schools and Libraries Fund to the High Cost Fund to maintain the contribution level of 7.3% for the latter half of 2002.<sup>9</sup>

Plainly, the dramatic increases in federal universal service support of the past and the extraordinary projected increases of the future demand to be addressed. We recognize that the FCC has referred many of these issues to the Joint Board.<sup>10</sup> However, the continued use of high

---

<sup>6</sup> 1Q:2003 USAC Projections (annualized) See: <http://www.usac.org>

<sup>7</sup> See Letter from Jeffery Smith, OPASTCO, to Marlene Dortch, Docket No. 96-45 (filed January 28, 2003) attaching *Universal Service in America: A Congressional Mandate At Risk*, January 2003, page 21 ("OPASTCO USF Ex Parte").

<sup>8</sup> Federal support mechanisms available to LECs, unlike competitive ETCs, are subject to various caps to limit growth in order to prevent the funds from burdening contributors.

<sup>9</sup> See *Proposed Fourth Quarter 2002 Universal Service Contribution Factor*, Public Notice, DA 02-1409, rel. September 10, 2002.

<sup>10</sup> *In the Matter of the Federal State Joint Board on Universal Service*, CC Docket 96-45, et. al., Released December 13, 2002

cost support mechanisms to promote uneconomic competition ignores such demands and simply provides wireless carriers a source of “ready money” while excusing them from universal service responsibilities as set out by Congress.

### III. True Competition Requires a Level Playing Field.

As stated previously, in state after state, wireless providers have sought and gained access to high cost funds for customers they have served for years, presumably at a profit. This windfall of support comes with none of the obligations that apply to the rural LECs. Unlike wireless carriers, rural LECs must actually invest in facilities **before** receiving high cost support. Colorado rural LECs **must** provide service to all who request it within their certificated service area or face monetary penalties.<sup>11</sup> In the RCC Holdings Order,<sup>12</sup> the Bureau acknowledges the failure of the applicant to provide ubiquitous coverage throughout its service territory but promptly excuses these “dead spots” and provides no repercussion for failing to serve customers located in these “coverage gaps.”<sup>13</sup> Rural LECs must adhere to stringent quality of service rules, designed to protect consumers. State commissions rarely impose comparable quality of service requirements upon wireless ETCs, leaving consumers to fend for themselves. Several states, including Colorado<sup>14</sup> and Kansas,<sup>15</sup> identify equal access as a supported service and require it be provided **before** granting rural LECs access to the state high cost fund. However, both states have exempted wireless carriers from this requirement on the grounds that it is “too costly” to provide.

Unfortunately, the Colorado Commission’s introduction of “competition” in the rural areas has not been accompanied by reducing its vigorous regulation of rural LECs. In fact, the converse has occurred and the Colorado Commission has imposed even more regulation on rural LECs. The Colorado Commission has saddled rural LECs with one of the most onerous support

---

<sup>11</sup> Rule 4 CCR 723-2.32.2 requires LECs to provide service within 30 days or provide prospective customer with \$150 per month to obtain alternative service.

<sup>12</sup> *In the Matter of Federal-State Joint Board on Universal Service, RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carriers Throughout its Licensed Service Area in the State of Alabama*, DA 02-3181, CC Docket No. 96-45, rel. November 27, 2002 (“RCC Holdings Order”).

<sup>13</sup> *Ibid.*, ¶16.

<sup>14</sup> 4 CCR 723-2-17.1.7

<sup>15</sup> KSA 66-1,187(p)

certification processes in the country.<sup>16</sup> Despite the fact that federal support for rural LECs is based on facilities investment already made and costs already incurred, the Colorado Commission required one-third of Colorado LECs<sup>17</sup> to provide evidence “that would demonstrate that the federal support the company receives will be used only for the provision, maintenance and upgrading of facilities for which the support is intended.”<sup>18</sup> Ultimately, four LECs were subject to audits, which included a review of various company practices (cash management, debt management, cost allocation, capital acquisition and capital expenditure) to satisfy the Colorado Commission’s perception of its obligation to the FCC. Although commission staff conducted a review of all LECs and ultimately concluded that all rural LECs were using federal support for its intended purpose, the Colorado Commission also required these same providers to self-certify its use of support. Not only were wireless ETCs excused from the initial review, they were not even required to self-certify to the Colorado Commission.

Simultaneous with identifying one of the benefits of wireless competition as the ability to serve customers without a line extension charge,<sup>19</sup> the Colorado Commission mandated rural LECs in the state to drastically increase their line extension credits. Companies resisting compliance, or even the amount of the Staff-calculated increase, were threatened with denial of certification for continued receipt of universal service support.<sup>20</sup> As a result, Colorado rural LECs are now required to construct facilities in remote areas while facing the distinct possibility that the customers could switch to a competitor at any time.

#### **IV. Redefining Rural Study Areas Will Not Incent True Competitive Entry in Colorado -- It will Impede it.**

Contrary to the assertions of the Colorado Commission, rural LEC study area redefinition will not incent competitive entry in rural Colorado. It will merely enable wireless CETCs to avoid competing in areas where they would rather not compete. Regulators should not confuse an *inability* to serve with a conscience *choice not* to serve. The Colorado Commission’s granting

---

<sup>16</sup> 47 C.F.R. § 54.314 requires that the state commission annually certify that rural ETCs are using federal support mechanisms for the purposes intended. Failure to receive certification results in a loss of federal support mechanism.

<sup>17</sup> Out of a total of twenty-nine LECs in Colorado, ten were subject to additional certification regulation.

<sup>18</sup> Docket No. 01M-387T, Staff Report, page 3, November 9, 2001.

<sup>19</sup> Colorado PUC Decision C01-476, ALJ Recommended Decision, page 17, Mailed Date: May 4, 2001

of CETC status to Western Wireless in the service territory of Rye Telephone Company (“Rye”) is a prime example. Rye is a small rural LEC, serving approximately 2000 customers in three separate wire centers. Two of the wire centers are located along an interstate highway, while one is in a sparsely populated region of the eastern plains of the state. Despite the fact that all three of Rye’s wire centers fall within its certificated and licensed area, Western Wireless claims an inability to serve one of Rye’s wire centers – coincidentally, the one consisting of approximately 100 customers scattered over approximately 1000 square miles. Western Wireless requested the Colorado Commission redefine Rye’s service area at the wire center level – a request the Colorado Commission has indicated it will grant.<sup>21</sup> When presented with a prime opportunity to incent a competitor to actually construct facilities, the Colorado Commission instead, gave Western Wireless a pass, while allowing it to access federal support mechanisms for its existing customer base. Accordingly, by granting Western Wireless ETC status in a redefined Rye service territory, the Colorado Commission has eliminated the incentive for Western Wireless to offer service in this remote area of Colorado, and in all likelihood forever depriving these citizens of wireless service.

The Colorado Commission’s claim that absent service area redefinition, Western Wireless or NECC cannot qualify for federal support mechanisms is simply not true. The Colorado Commission implies that Western Wireless can only meet the requirement of offering service throughout its service territory using its own facilities. Section 214(e) of the 1996 Act expressly allows an ETC to “offer the supported services either using its own facilities or **a combination of its own facilities and resale of another carrier’s service.**”<sup>22</sup> Both NECC and Western Wireless have represented to the Colorado Commission that they have the ability to use the facilities of other providers to meet the requirement to offer the supported services throughout its service territory. In another Colorado proceeding to redefine the service territories of four rural LECs, NECC has acknowledged an inability to serve the entirety of seven wire centers and has represented it will comply with the requirement to serve all customers with

---

<sup>20</sup> Docket No. 02M-394T, Staff Report, September 10, 2002. Staff recommended Wiggins Telephone Association be denied certification. Wiggins later modified its local tariff and was certified by the Colorado Commission.

<sup>21</sup> The Colorado Commission has indicated it will continue with the redefinition of the service territories of all the rural LECs in the state.

<sup>22</sup> 47 U.S.C. 214(e) (emphasis added).

“roaming agreements with adjacent providers, or possibly other such measures.”<sup>23</sup> In other words, NECC and Western Wireless have the capability offer a competitive alternative to all the customers in service territories of Colorado rural LECs. Granting their request for service area redefinition excuses them offering service to those customers they would rather not serve.

## **V. The Redefinition of CenturyTel’s Service Territory Does Not Comply with FCC Precedent.**

Section 214(e)(5) of the Act provides that for an area served by a rural telephone company, the term “service area” means the company’s study area unless or until the FCC and the state commission establish a different definition of service area for such company.<sup>24</sup> The FCC correctly observed that requiring competitors to serve the entire study area would help minimize the potential for “cream skimming.”<sup>25</sup> Additionally, the FCC recognized that due to federal universal service support for rural LECs being calculated using the company’s embedded costs averaged over the **entire** study area, consistency requires a rural LEC’s service territory to equal its study area.<sup>26</sup> Since the issuance of its Universal Service Order, the FCC reaffirmed the method of calculating the cost of providing universal service in areas served by rural LECs.<sup>27</sup> Accordingly, destroying the linkage between service territory and study areas for rural LECs should only occur after very careful consideration of the full impact of such a policy decision. For these reasons, the FCC and the Joint Board rejected the request of wireless carriers to define the service territory of rural LECs at the exchange level – the identical request the Colorado Commission makes in this proceeding.

While the FCC did recognize that under certain circumstances, rural LEC study area redefinition may be appropriate, it recommended redefinition be limited to the non-contiguous portions of a rural LEC’s study area, rather wholesale redefinition at the wire center level.<sup>28</sup> By limiting service area redefinition to the non-contiguous portions of the study area, barriers to

---

<sup>23</sup> Docket No. 02A-444T, Answer Testimony of Staff Witness Fischhaber, page 9. This testimony was later redacted after NECC withdrew its request for redefinition below the wire center level.

<sup>24</sup> 47 U.S.C. 214(e)(5).

<sup>25</sup> *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, FCC 97-157 (May 8, 1997) at 189. (“*Universal Service Order*”)

<sup>26</sup> *Ibid.*

<sup>27</sup> *See In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, FCC 01-157, CC Docket Nos. 96-45 and 00-256, rel. May 23, 2001, ¶37 (“*Rural Task Force Order*”)



entry would largely be eliminated, yet the service areas of small contiguous rural LECs would not be further reduced. The Colorado Commission's redefinition of CenturyTel's service territory is a prime example of this policy. CenturyTel's Colorado service area is comprised of 53 separate wire centers scattered in 13 non-contiguous areas across the state. Had the Colorado Commission elected to fragment CenturyTel's service areas into only 13 non-contiguous service territories (as recommended by the FCC) instead of 53 different service territories – the outcome would have been identical. NECC would be qualified for federal support mechanisms in the identical areas in which they requested. In other words, the Colorado Commission ignored FCC precedent and granted NECC's request for no logical reason.

## **VI. Redefinition of Delta County's Service Area Cannot Occur Before Designation of a Competitive ETC.**

The Colorado Commission's "evidence" for the need that Delta County's service territory requires redefinition consists of nothing more than vague, unsubstantiated opinions. In its Petition before the FCC requesting agreement with the redefinition of Delta County's service area, the Colorado Commission presents zero factual evidence. Rather, it asks the FCC to rely on uncorroborated statements.

The size and topography of Delta's service area are such that **potential** new entrants will find it burdensome to serve the entirety of that area all at once.<sup>29</sup>

...

Specifically, Petitioner notes that given the present configuration of Delta's study area/service area, **potential** competitors are unlikely to apply for certification as an ETC because of the difficulty of serving all of Delta's study area.<sup>30</sup>

The reason the Colorado Commission has no factual evidence is that there is no current applicant for ETC status in Delta County's service area. The 1996 Act is unambiguous – state commissions must make a public interest finding for each impacted rural company **before**

---

<sup>28</sup> *Universal Service Order* at 129

<sup>29</sup> See *Petition by the Colorado Public Utilities Commission, Pursuant to 47 CFR §54.207(C) for Commission Agreement in Redefining the Service Area of Delta County Tele-Comm, Inc., a Rural Telephone Company*, CC Docket No. 96-45, filed September 13, 2002, page 1 (emphasis added) ("Colorado Commission Petition").

<sup>30</sup> Colorado Commission Petition, page 11 (emphasis added).

designating a second ETC. Obviously, no such finding can occur without a complete review of the attributes of the applicant.

Congress did not intend that state commissions be permitted to make general findings that competition is in the public interest and start searching for “competitors” upon which to bestow access to federal support mechanisms. Had this been Congressional intent, there would have been no need for the limitations placed upon ETC designations in the service area of rural LECs. Judging the benefits added to the public interest by a potential competitor would be unnecessary. Indeed, had the Colorado Commission’s illogical proposal been the intent of Congress, the term would not be “eligible telecommunications carrier,” it would instead be “eligible telecommunications area.”

## **V. Conclusion**

State and federal regulators have embarked upon introducing competition in rural high cost areas. Incredibly, this experiment is being performed in the wake of the reconsideration of competitive policy in non-rural areas, which typically possess the density necessary to support multiple service providers. Competition, especially when it provides incorrect economic signals, is not always in the public interest. Continuing to weaken or ignore the Congressionally mandated requirements for access to universal service support mechanisms is not in the public interest and jeopardizes the very existence of the funds. Accordingly, the FCC must reject both requests of the Colorado Commission to redefine rural service territories.

Respectfully submitted,

[electronically filed]

Kevin Kelly  
Managing Regulatory Consultant  
TCA, Inc.-Telcom Consulting Associates  
1465 Kelly Johnson Blvd., Suite 200  
Colorado Springs, CO 80920  
(719) 266-4334

February 6, 2003